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SENATE BILL 777

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Gerald P. Ortiz y Pino

AN ACT

RELATING TO OIL AND GAS; AMENDING AND ENACTING SECTIONS OF THE OIL AND GAS ACT AND AMENDING THE GEOTHERMAL RESOURCES CONSERVATION ACT; PROVIDING FOR PERMITS FOR THE DISCHARGE OR POTENTIAL DISCHARGE OF WATER CONTAMINANTS; PROVIDING FOR APPEAL FROM DECISIONS OF THE OIL CONSERVATION COMMISSION; ESTABLISHING CERTAIN FINES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 70-2-12 NMSA 1978 (being Laws 1978, Chapter 71, Section 1, as amended) is amended to read:

"70-2-12. ENUMERATION OF POWERS. --

A. Included in the power given to the oil conservation division of the energy, minerals and natural resources department is the authority to collect data; to make

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1 investigations and inspections; to examine properties, leases,
2 papers, books and records; to examine, check, test and gauge
3 oil and gas wells, tanks, plants, refineries and all means and
4 modes of transportation and equipment; to hold hearings; to
5 provide for the keeping of records and the making of reports
6 and for the checking of the accuracy of the records and
7 reports; to limit and prorate production of crude petroleum oil
8 or natural gas or both as provided in the Oil and Gas Act; and
9 to require either generally or in particular areas certificates
10 of clearance or tenders in connection with the transportation
11 of crude petroleum oil or natural gas or any products of either
12 or both oil and products or both natural gas and products.

13 B. Apart from any authority, express or implied,
14 elsewhere given to or existing in the oil conservation division
15 by virtue of the Oil and Gas Act or the statutes of this state,
16 the division is authorized to make rules [regulations] and
17 orders for the purposes and with respect to the subject matter
18 stated in this subsection:

19 (1) to require dry or abandoned wells to be
20 plugged in a way to confine the crude petroleum oil, natural
21 gas or water in the strata in which it is found and to prevent
22 it from escaping into other strata; the division shall require
23 a cash or surety bond in a sum not to exceed fifty thousand
24 dollars (\$50,000) conditioned for the performance of such
25 regulations;

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1 (2) to prevent crude petroleum oil, natural
2 gas or water from escaping from strata in which it is found
3 into other strata;

4 (3) to require reports showing locations of
5 all oil or gas wells and for the filing of logs and drilling
6 records or reports;

7 (4) to prevent the drowning by water of any
8 stratum or part thereof capable of producing oil or gas or both
9 oil and gas in paying quantities and to prevent the premature
10 and irregular encroachment of water or any other kind of water
11 encroachment that reduces or tends to reduce the total ultimate
12 recovery of crude petroleum oil or gas or both oil and gas from
13 any pool;

14 (5) to prevent fires;

15 (6) to prevent [~~"blow-ups"~~] "blow-outs" and
16 "caving" in the sense that the conditions indicated by such
17 terms are generally understood in the oil and gas business;

18 (7) to require wells to be drilled, operated
19 and produced in such manner as to prevent injury to neighboring
20 leases or properties;

21 (8) to identify the ownership of oil or gas
22 producing leases, properties, wells, tanks, refineries,
23 pipelines, plants, structures and all transportation equipment
24 and facilities;

25 (9) to require the operation of wells with

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1 efficient gas-oil ratios and to fix such ratios;

2 (10) to fix the spacing of wells;

3 (11) to determine whether a particular well or
4 pool is a gas or oil well or a gas or oil pool, as the case may
5 be, and from time to time to classify and reclassify wells and
6 pools accordingly;

7 (12) to determine the limits of any pool
8 producing crude petroleum oil or natural gas or both and from
9 time to time redetermine the limits;

10 (13) to regulate the methods and devices
11 employed for storage in this state of oil or natural gas or any
12 product of either, including subsurface storage;

13 (14) to permit the injection of natural gas or
14 of any other substance into any pool in this state for the
15 purpose of repressuring, cycling, pressure maintenance,
16 secondary or any other enhanced recovery operations;

17 (15) to regulate the disposition of water
18 produced or used in connection with the drilling for or
19 producing of oil or gas or both and to direct surface or
20 subsurface disposal of the water, including disposition by use
21 in drilling for or production of oil or gas, in road
22 construction or maintenance or other construction, in the
23 generation of electricity or in other industrial processes, in
24 a manner that will afford reasonable protection against
25 contamination of fresh water supplies designated by the state

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1 engineer;

2 (16) to determine the limits of any area
3 containing commercial potash deposits and from time to time
4 redetermine the limits;

5 (17) to regulate and, where necessary,
6 prohibit drilling or producing operations for oil or gas within
7 any area containing commercial deposits of potash where the
8 operations would have the effect unduly to reduce the total
9 quantity of the commercial deposits of potash that may
10 reasonably be recovered in commercial quantities or where the
11 operations would interfere unduly with the orderly commercial
12 development of the potash deposits;

13 (18) to spend the oil and gas reclamation fund
14 and do all acts necessary and proper to plug dry ~~[and]~~ or
15 abandoned oil and gas wells and to restore and remediate
16 abandoned well sites and associated production facilities in
17 accordance with the provisions of the Oil and Gas Act, the
18 rules and regulations adopted under that act and the
19 Procurement Code, including disposing of salvageable equipment
20 and material removed from oil and gas wells being plugged by
21 the state;

22 (19) to make well price category
23 determinations pursuant to the provisions of the federal
24 Natural Gas Policy Act of 1978 or any successor act and, by
25 ~~[regulation]~~ rule, to adopt fees for such determinations, which

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1 fees shall not exceed twenty-five dollars (\$25.00) per filing.
2 Such fees shall be credited to the account of the oil
3 conservation division by the state treasurer and may be
4 expended as authorized by the legislature;

5 (20) to regulate the construction and
6 operation of oil treating plants and to require the posting of
7 bonds for the reclamation of treating plant sites after
8 cessation of operations;

9 (21) to regulate the disposition of
10 nondomestic wastes resulting from the exploration, development,
11 production or storage of crude oil or natural gas to protect
12 public health and the environment; [and]

13 (22) to regulate the disposition of
14 nondomestic wastes resulting from the oil field service
15 industry, the transportation of crude oil or natural gas, the
16 treatment of natural gas or the refinement of crude oil to
17 protect public health and the environment, including
18 administering the Water Quality Act as provided in Subsection E
19 of Section 74-6-4 NMSA 1978;

20 (23) to require permits for activities
21 regulated by this chapter, including permits for construction
22 or operation of facilities that may discharge any water
23 contaminant; and

24 (24) to establish a schedule of fees for
25 permits issued pursuant to Section 6 of this 2005 act, not

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1 exceeding the estimated cost of investigation, issuance,
2 modification and renewal of such permits. "

3 Section 2. Section 70-2-25 NMSA 1978 (being Laws 1935,
4 Chapter 72, Section 17, as amended) is amended to read:

5 "70-2-25. REHEARINGS--APPEALS. --

6 A. Within twenty days after entry of an order or
7 decision of the commission, a party of record to the proceeding
8 before the commission that is adversely affected by the order
9 or decision may file with the commission an application for
10 rehearing in respect of any matter determined by the order or
11 decision, setting forth the respect in which the order or
12 decision is believed to be erroneous. The commission shall
13 grant or refuse the application in whole or in part within ten
14 days after the application is filed, and failure to act on the
15 application within that period shall be deemed a refusal and
16 final disposition of that application. In the event the
17 rehearing is granted, the commission [~~may~~] shall enter a new
18 order or decision after rehearing as may be required under the
19 circumstances.

20 B. An order of the commission shall become final
21 twenty days after the order is issued if no application for
22 rehearing is filed. If an application for rehearing is filed
23 and not granted, the order shall become final on the day that
24 the application for rehearing is denied or deemed denied. If
25 the commission grants a timely application for rehearing within

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1 ten days after it is filed, the original order shall not become
2 final but the order entered after rehearing shall become final.

3 ~~[B.]~~ C. A party of record to the ~~[rehearing]~~
4 proceeding ~~[dissatisfied with the disposition of the~~
5 ~~application for rehearing]~~ before the commission that is
6 adversely affected by a final order of the commission may
7 appeal to the district court pursuant to the provisions of
8 Section 39-3-1.1 NMSA 1978.

9 D. In applying the provisions of Section 39-3-1.1
10 NMSA 1978 for an appeal pursuant to this section:

11 (1) at the time an order is issued, service of
12 a copy of the commission order shall be made upon parties of
13 record to the proceeding, together with a statement of both the
14 time when the order will become final and rights of appeal,
15 which shall constitute compliance with Subsection B of Section
16 39-3-1.1 NMSA 1978; provided that if the commission denies an
17 application for rehearing by written order, a copy of the order
18 denying the application for rehearing shall also be served on
19 each party of record to the proceeding at the time of its
20 issuance;

21 (2) the notice of appeal required by
22 Subsection C of Section 39-3-1.1 NMSA 1978 shall be filed
23 within thirty days after the date when the commission order
24 becomes final; and

25 (3) a final order of the commission adopting

1 or amending a rule may be appealed in the same manner as any
2 other final order of the commission."

3 Section 3. Section 70-2-28 NMSA 1978 (being Laws 1935,
4 Chapter 72, Section 19, as amended) is amended to read:

5 "70-2-28. ACTIONS FOR VIOLATIONS. -- Whenever it [~~shall~~
6 ~~appear~~] appears that any person is violating or threatening to
7 violate any statute of this state with respect to the
8 conservation of oil and gas or both or any provision of [~~this~~]
9 the Oil and Gas Act or any rule [~~regulation~~] or order [~~made~~
10 ~~thereunder~~] adopted pursuant to that act, the division through
11 the attorney general shall bring suit against [~~such~~] that
12 person in the county of the residence of the defendant or in
13 the county of the residence of any defendant, if there [~~be~~] is
14 more than one defendant, or in the county where the violation
15 is alleged to have occurred for penalties, if any are
16 applicable, and to restrain [~~such~~] the person from continuing
17 [~~such~~] the violation or from carrying out the threat of
18 violation. In [~~such~~] the suit, the division may obtain
19 injunctions, prohibitory and mandatory, including temporary
20 restraining orders and temporary injunctions, as the facts may
21 warrant, including, when appropriate, an injunction restraining
22 any person from moving or disposing of illegal oil or illegal
23 oil product or illegal gas or illegal gas product, and any or
24 all such commodities or funds derived from the sale thereof may
25 be ordered to be impounded or placed under the control of an

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1 agent appointed by the court if, in the judgment of the court,
2 such action is advisable. The remedies provided by this
3 section shall be cumulative and shall not limit any other
4 rights or remedies of the division or the commission with
5 respect to any violation of the Oil and Gas Act or of any rule,
6 order or permit made or issued pursuant to that act."

7 Section 4. Section 70-2-31 NMSA 1978 (being Laws 1981,
8 Chapter 362, Section 1) is amended to read:

9 "70-2-31. VIOLATIONS OF THE OIL AND GAS ACT--PENALTIES. --

10 A. ~~[Any]~~ Except as provided in Subsection B of this
11 section, a person [who knowingly and willfully] that violates
12 [any] a provision of the Oil and Gas Act or any [provision of
13 any] rule, [or] order or permit issued pursuant to that act
14 shall be subject to a civil penalty of not more than one
15 thousand dollars (\$1,000) for each day of violation. [For
16 purposes of this subsection, in the case of a continuing
17 violation each day of violation shall constitute a separate
18 violation. The penalties provided in this subsection]

19 B. If a person violates any provision of the Oil
20 and Gas Act or any rule or order issued under that act, which
21 violation is an unauthorized discharge into the environment of
22 any water contaminant, the civil penalty for each day of
23 violation shall be ten thousand dollars (\$10,000) for each day
24 of violation.

25 C. The division or the commission may assess the

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1 civil penalties provided in this section after notice and an
2 opportunity for a public hearing. In assessing the penalty,
3 the division or the commission shall take into account the
4 seriousness of the violation and any good-faith efforts to
5 comply with the applicable requirement.

6 D. A penalty not paid within thirty days after the
7 order assessing the penalty becomes final and shall be
8 recoverable by a civil suit filed by the attorney general in
9 the name and on behalf of the commission or the division in the
10 district court of the county in which the defendant resides or
11 in which any defendant resides if there [be] is more than one
12 defendant or in the district court of any county in which the
13 violation occurred. The payment of [~~such~~] the penalty shall
14 not operate to legalize any illegal oil, illegal gas or illegal
15 product involved in the violation for which the penalty is
16 imposed or relieve a person on whom the penalty is imposed from
17 liability to any other person for damages arising out of [~~such~~]
18 the violation.

19 [~~B.~~] E. It is unlawful, subject to a criminal
20 penalty of a fine of not more than [~~five thousand dollars~~
21 ~~(\$5,000)] fifteen thousand dollars (\$15,000) or imprisonment~~
22 for a term not exceeding three years or both such fine and
23 imprisonment, for any person to knowingly and willfully:

24 (1) violate any provision of the Oil and Gas
25 Act or any rule, [~~regulation or~~] order [~~of the commission or~~

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1 ~~the division~~ or permit issued pursuant to that act; ~~or~~

2 (2) do any of the following for the purpose of
3 evading or violating the Oil and Gas Act or any rule,
4 ~~regulation or~~ order ~~of the commission or the division~~ or
5 permit issued pursuant to that act:

6 (a) make any false entry or statement in
7 a form or report required by the Oil and Gas Act or by any
8 rule, ~~regulation or~~ order ~~of the commission or division~~ or
9 permit issued pursuant to that act;

10 (b) make or cause to be made any false
11 entry in any record, account or memorandum required by the Oil
12 and Gas Act or by any rule, ~~regulation or~~ order ~~of the~~
13 ~~commission or division~~ or permit issued pursuant to that act;

14 (c) omit or cause to be omitted from any
15 such record, account or memorandum full, true and correct
16 entries; or

17 (d) remove from this state or destroy,
18 mutilate, alter or falsify any such record, account or
19 memorandum; or

20 (3) procure, counsel, aid or abet the
21 commission of any act described in this subsection.

22 ~~[C.]~~ E. For the purposes of Subsection ~~[B]~~ E of
23 this section, each day of violation shall constitute a separate
24 offense.

25 ~~[D. Any person who knowingly and willfully~~

1 ~~procures, counsels, aides or abets the commission of any act~~
2 ~~described in Subsection A or B of this section shall be subject~~
3 ~~to the same penalties as are prescribed therein.]~~

4 G. Penalties assessed and collected pursuant to
5 Subsection A of this section shall be deposited in the oil and
6 gas reclamation fund. "

7 Section 5. A new section of the Oil and Gas Act is
8 enacted to read:

9 "[NEW MATERIAL] OIL AND GAS FACILITIES FUND CREATED. -- The
10 "oil and gas facilities fund" is created in the state treasury
11 to be administered by the energy, minerals and natural
12 resources department. The fund is composed of all fees
13 collected pursuant to the rules adopted under Subsection B of
14 Section 70-2-12 NMSA 1978 or from the issuance of discharge
15 permits and of earnings from investment of the fund. Money in
16 the fund is appropriated to the energy, minerals and natural
17 resources department for the purpose of administering the rules
18 adopted pursuant to Chapter 70 NMSA 1978 and shall not revert
19 at the end of a fiscal year. Disbursements from the fund shall
20 be made upon warrants drawn by the secretary of finance and
21 administration pursuant to vouchers signed by the secretary of
22 energy, minerals and natural resources. "

23 Section 6. A new section of the Oil and Gas Act is
24 enacted to read:

25 "[NEW MATERIAL] DISCHARGE PERMITS. --

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1 A. The commission may require by rule that an
2 operator of any facility subject to the jurisdiction of the
3 division obtain a permit for the disposition of nondomestic
4 wastes.

5 B. The commission shall set by rule the dates for
6 filing applications for the permits authorized in Subsection A
7 of this section and shall prescribe the contents of the
8 application and set the time periods within which the division
9 shall either grant or deny the permit or grant a conditional
10 permit.

11 C. The division may deny any application for a
12 permit if:

13 (1) the wastes would not meet all applicable
14 state or federal rules and regulations, performance standards
15 or limitations;

16 (2) any provision of the Oil and Gas Act or
17 any other statute would be violated; or

18 (3) the disposition of waste would cause or
19 contribute to contaminant levels in excess of any state or
20 federal standard, including any water quality standard adopted
21 by the water quality control commission. Determination of the
22 discharge's effect on ground water shall be measured at any
23 place of withdrawal of water for present or reasonably
24 foreseeable future use. Determination of the discharge's
25 effect on surface waters shall be measured at the point of

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1 discharge.

2 D. The commission shall adopt rules for procedures
3 to ensure that the public and appropriate governmental agencies
4 receive notice of each application for issuance or material
5 modification of a permit and shall provide an opportunity for
6 filing of written comments on the application. If an
7 application is protested or if the division determines that
8 there is substantial public interest in an application, the
9 division may hold a public hearing prior to ruling on the
10 application.

11 E. The commission shall adopt rules for the
12 operation and maintenance of those facilities regulated under
13 Paragraphs (21) and (22) of Subsection B of Section 70-2-12
14 NMSA 1978, including requirements for continuity of operation,
15 personnel training and financial responsibility, including
16 financial responsibility for corrective action.

17 F. Permits shall be issued for fixed terms not to
18 exceed five years, except that new permits shall commence on
19 the date the permitted activity begins, but in no event shall
20 the term of the permit exceed seven years from the date of
21 issuance.

22 G. The division may impose reasonable conditions
23 upon permits, requiring permittees to:

24 (1) install, use and maintain effluent
25 monitoring devices;

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1 (2) sample wastes and receiving waters for any
2 known or suspected water contaminants, in accordance with
3 methods and at locations and intervals as may be prescribed by
4 the division;

5 (3) establish and maintain records of the
6 nature and amounts of effluents and the performance of effluent
7 control devices;

8 (4) provide any other information relating to
9 the discharge or release of water contaminants; and

10 (5) notify the division of the introduction of
11 new water contaminants from a new source and of a substantial
12 change in the volume or character of water contaminants being
13 introduced from sources in existence at the time of the
14 issuance of the permit.

15 H. The issuance of a permit does not relieve a
16 person from the responsibility to comply with all state or
17 federal statutes, rules or regulations or state or federal
18 water quality standards.

19 I. A permit may be terminated or modified by the
20 division prior to its date of expiration for the following
21 causes:

22 (1) violation of a condition of the permit;
23 (2) the obtaining of a permit by
24 misrepresentation or failure to disclose fully all required
25 information;

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1 (3) violation of any applicable statute, rule,
2 performance standard or water quality standard;

3 (4) violation of applicable state or federal
4 effluent rules or regulations; or

5 (5) a change in any condition that requires
6 either a temporary or permanent reduction or elimination of the
7 discharge of waste to ensure that any state or federal
8 standard, including any water quality standard adopted by the
9 water quality control commission, is not exceeded.

10 J. If the division denies, terminates or modifies a
11 permit, other than as requested by the permittee, or grants a
12 permit subject to condition, the division shall notify the
13 applicant or permittee by certified mail of the action taken
14 and the reasons. If the permittee files an application for
15 review of the division's decision within thirty days of the
16 date of the notice, the applicant shall be entitled to a
17 hearing as provided in Section 70-2-13 NMSA 1978. "

18 Section 7. Section 70-2-33 NMSA 1978 (being Laws 1935,
19 Chapter 72, Section 24, as amended) is amended to read:

20 "70-2-33. DEFINITIONS. --As used in the Oil and Gas Act:

21 A. "person" means:

22 (1) any individual, estate, trust, receiver,
23 cooperative association, club, corporation, company, firm,
24 partnership, joint venture, syndicate or other entity; or

25 (2) the United States or any agency or

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1 instrumentality thereof or the state or any political
2 subdivision thereof;

3 B. "pool" means an underground reservoir containing
4 a common accumulation of crude petroleum oil or natural gas or
5 both. Each zone of a general structure, which zone is
6 completely separate from any other zone in the structure, is
7 covered by the word pool as used in the Oil and Gas Act. Pool
8 is synonymous with "common source of supply" and with "common
9 reservoir";

10 C. "field" means the general area that is underlaid
11 or appears to be underlaid by at least one pool and also
12 includes the underground reservoir or reservoirs containing the
13 crude petroleum oil or natural gas or both. The words field
14 and pool mean the same thing when only one underground
15 reservoir is involved; however, field, unlike pool, may relate
16 to two or more pools;

17 D. "product" means any commodity or thing made or
18 manufactured from crude petroleum oil or natural gas and all
19 derivatives of crude petroleum oil or natural gas, including
20 refined crude oil, crude tops, topped crude, processed crude
21 petroleum, residue from crude petroleum, cracking stock,
22 uncracked fuel oil, treated crude oil, fuel oil, residuum, gas
23 oil, naphtha, distillate, gasoline, kerosene, benzine, wash
24 oil, waste oil, lubricating oil and blends or mixtures of crude
25 petroleum oil or natural gas or any derivative thereof;

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1 E. "owner" means the person who has the right to
2 drill into and to produce from any pool and to appropriate the
3 production either for ~~himself~~ the person or for ~~himself~~ the
4 person and another;

5 F. "producer" means the owner of a well capable of
6 producing oil or natural gas or both in paying quantities;

7 G. "gas transportation facility" means a pipeline
8 in operation serving gas wells for the transportation of
9 natural gas or some other device or equipment in like operation
10 whereby natural gas produced from gas wells connected therewith
11 can be transported or used for consumption;

12 H. "correlative rights" means the opportunity
13 afforded, so far as it is practicable to do so, to the owner of
14 each property in a pool to produce without waste ~~his~~ the
15 owner's just and equitable share of the oil or gas or both in
16 the pool, being an amount, so far as can be practicably
17 determined and so far as can be practicably obtained without
18 waste, substantially in the proportion that the quantity of
19 recoverable oil or gas or both under the property bears to the
20 total recoverable oil or gas or both in the pool and, for such
21 purpose, to use ~~his~~ the owner's just and equitable share of
22 the reservoir energy;

23 I. "potash" means the naturally occurring bedded
24 deposits of the salts of the element potassium;

25 J. "casinghead gas" means any gas or vapor or both

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1 indigenous to an oil stratum and produced from such stratum
2 with oil, including any residue gas remaining after the
3 processing of casinghead gas to remove its liquid components;
4 [~~and~~]

5 K. "produced water" means water that is an
6 incidental byproduct from drilling for or the production of oil
7 and gas;

8 L. "commission" means the oil conservation
9 commission as created in Section 70-2-4 NMSA 1978;

10 M "division" means the oil conservation division
11 of the energy, minerals and natural resources department; and

12 N. "party of record" means a person who is a formal
13 and legal participant in a proceeding before the commission. "

14 Section 8. Section 71-5-18 NMSA 1978 (being Laws 1975,
15 Chapter 272, Section 18, as amended) is amended to read:

16 "71-5-18. REHEARINGS--APPEALS. --

17 A. Within twenty days after entry of an order or
18 decision of the [~~division~~] commission, a party of record to the
19 proceeding before the commission who is adversely affected by
20 the order or decision may file with the commission an
21 application for rehearing in respect of any matter determined
22 by the order or decision, setting forth the respect in which
23 the order or decision is believed to be erroneous. The
24 commission shall grant or refuse the application in whole or in
25 part within ten days after it is filed, and failure to act

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1 within the ten-day period shall be deemed a refusal of the
2 application and a final disposition of the application. In the
3 event the rehearing is granted, the commission [~~may~~] shall
4 enter a new order or decision after rehearing as ~~may~~ be
5 required under the circumstances.

6 B. An order of the commission shall become final
7 twenty days after the order is issued if no application for
8 rehearing is filed. If an application for rehearing is filed
9 and not granted, the order shall become final on the day that
10 the application for rehearing is denied. If the commission
11 grants a timely application for rehearing within ten days after
12 it is filed, the original order shall not become final but the
13 order entered after the rehearing shall become final.

14 [~~B.-~~] C. A party of record to the [rehearing]
15 proceeding [~~dissatisfied with the disposition of the~~
16 application for rehearing] before the commission who is
17 adversely affected by a final order of the commission may
18 appeal to the district court pursuant to the provisions of
19 Section 39-3-1.1 NMSA 1978.

20 D. In applying the provisions of Section 39-3-1.1
21 NMSA 1978 to any appeal pursuant to this section:

22 (1) at the time an order is issued, service of
23 a copy of the commission order shall be made upon parties of
24 record to the proceeding, together with a statement of both the
25 time when the order will become final and rights of appeal,

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1 which shall constitute compliance with Subsection B of Section
2 39-3-1.1 NMSA 1978; provided that if the commission denies an
3 application for rehearing by written order, a copy of the order
4 denying the application for rehearing shall also be served on
5 each party of record to the proceeding at the time of its
6 issuance;

7 (2) the notice of appeal required by
8 Subsection C of Section 39-3-1.1 NMSA 1978 shall be filed
9 within thirty days after the date when the commission order
10 becomes final; and

11 (3) a final order of the commission adopting
12 or amending a rule may be appealed in the same manner as any
13 other final order of the commission.

14 [~~E.~~] E. The pendency of proceedings to review shall
15 not of itself stay or suspend operation of the order or
16 decision being reviewed, but during the pendency of the
17 proceedings, the district court in its discretion may, upon its
18 own motion or upon proper application of any party to the
19 proceedings, stay or suspend in whole or in part operation of
20 the order or decision pending review on terms as the court
21 deems just and proper and in accordance with the practice of
22 courts exercising equity jurisdiction; provided that the court,
23 as a condition to any staying or suspension of operation of any
24 order or decision, may require that one or more parties secure,
25 in a form and amount as the court may deem just and proper, one

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1 or more other parties against loss or damage due to the staying
2 or suspension of the commission's or division's order or
3 decision in the event that the action of the commission or
4 division is affirmed. "

5 Section 9. Section 71-5-20 NMSA 1978 (being Laws 1975,
6 Chapter 272, Section 20, as amended) is amended to read:

7 "71-5-20. ACTIONS FOR VIOLATIONS. -- Whenever it [~~shall~~
8 ~~appear~~] appears that any person is violating or threatening to
9 violate any statute of this state with respect to the
10 conservation of geothermal resources or any provision of the
11 Geothermal Resources Conservation Act or any rule [~~regulation~~]
12 or order made [~~thereunder~~] pursuant to that act, the division
13 through the attorney general shall bring suit against [~~such~~]
14 the person in the county of the residence of the defendant or
15 in the county of the residence of any defendant if there [~~be~~]
16 is more than one defendant or in the county where the violation
17 is alleged to have occurred for penalties, if any are
18 applicable, and to restrain [~~such~~] the person from continuing
19 [~~such~~] the violation or from carrying out the threat of
20 violation. In [~~such~~] the suit, the division may obtain
21 injunction, prohibitory and mandatory, including temporary
22 restraining orders and temporary injunctions, as the facts may
23 warrant, including, when appropriate, an injunction restraining
24 any person from moving or disposing of illegal geothermal
25 resources or illegal geothermal resources product, and any or

underscored material = new
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1 all such commodities or funds derived from ~~[the]~~ their sale
2 ~~[thereof]~~ may be ordered to be impounded or placed under the
3 control of an agent appointed by the court if, in the judgment
4 of the court, such action is advisable. Remedies provided by
5 this section shall be cumulative and shall not limit any other
6 rights or remedies of the division or the commission with
7 respect to any violation of the Geothermal Resources
8 Conservation Act or of any rule, order or permit made or issued
9 pursuant to that act. "

10 Section 10. Section 71-5-23 NMSA 1978 (being Laws 1981,
11 Chapter 362, Section 2) is amended to read:

12 "71-5-23. VIOLATIONS OF THE GEOTHERMAL RESOURCES
13 CONSERVATION ACT--PENALTIES. --

14 A. ~~[Any]~~ A person who ~~[knowingly and willfully]~~
15 violates ~~[any]~~ a provision of the Geothermal Resources
16 Conservation Act or any ~~[provision of any]~~ rule, ~~[or]~~ order or
17 permit issued pursuant to that act shall be subject to a civil
18 penalty of not more than two thousand five hundred dollars
19 (\$2,500) for each violation. If the violation results in an
20 unauthorized discharge into the environment of any water
21 contaminant, the applicable civil penalty shall be not more
22 than ten thousand dollars (\$10,000) for each violation. For
23 purposes of this subsection, in the case of a continuing
24 violation, each day of violation shall constitute a separate
25 violation. The ~~[penalties provided in this subsection]~~

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1 division or the commission may assess the penalties provided in
2 this subsection after notice and an opportunity for a public
3 hearing. A penalty not paid within thirty days after issuance
4 of the order assessing the penalty becomes final and shall be
5 recoverable by a civil suit filed by the attorney general in
6 the name and on behalf of the commission or the division in the
7 district court of the county in which the defendant resides or
8 in which any defendant resides if there [be] is more than one
9 defendant or in the district court of any county in which the
10 violation occurred; provided that, if any final order assessing
11 a penalty is appealed pursuant to Section 71-5-18 NMSA 1978,
12 the commission may seek recovery of the penalty by counterclaim
13 in such case. The payment [to] of such penalty shall not
14 operate to legalize any illegal geothermal resources or illegal
15 geothermal resources product involved in the violation for
16 which the penalty is imposed or relieve a person on whom the
17 penalty is imposed from liability to any other person for
18 damages arising out of [such] the violation.

19 B. It is unlawful, subject to a criminal penalty of
20 a fine of not more than [~~five thousand dollars (\$5,000)~~]
21 fifteen thousand dollars (\$15,000) or imprisonment for a term
22 not exceeding three years or both such fine and imprisonment,
23 for any person to knowingly and willfully:

24 (1) violate any provision of the Geothermal
25 Resources Conservation Act or any rule, [~~regulation or~~] order

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1 ~~[of the commission or the division]~~ or permit issued pursuant
2 to that act; ~~[or]~~

3 (2) do any of the following for the purpose of
4 evading or violating the Geothermal Resources Conservation Act
5 or any rule, ~~[regulation or]~~ order ~~[of the commission or the~~
6 ~~division]~~ or permit issued pursuant to that act:

7 (a) make any false entry or statement in
8 a form or report required by the Geothermal Resources
9 Conservation Act or by any rule, ~~[regulation or]~~ order ~~[of the~~
10 ~~commission or division]~~ or permit issued pursuant to that act;

11 (b) make or cause to be made any false
12 entry in any record, account or memorandum required by the
13 Geothermal Resources Conservation Act or by any rule,
14 ~~[regulation or]~~ order ~~[of the commission or division]~~ or permit
15 issued pursuant to that act;

16 (c) omit or cause to be omitted from any
17 such record, account or memorandum full, true and correct
18 entries; or

19 (d) remove from this state or destroy,
20 mutilate, alter or falsify any such record, account or
21 memorandum; or

22 (3) procure, counsel, aid or abet the
23 violation of this section by any other person.

24 C. For the purposes of Subsection B of this
25 section, each day of violation shall constitute a separate

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1 offense.

2 [D. ~~Any person who knowingly and willfully~~
3 ~~procures, counsels, aids or abets the commission of any act~~
4 ~~described in Subsection A or B of this section shall be subject~~
5 ~~to the same penalties as are prescribed therein.]"~~

6 Section 11. REPEAL. -- Section 70-2-26 NMSA 1978 (being
7 Laws 1977, Chapter 255, Section 60, as amended) is repealed.

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